



California Fair Political Practices Commission

September 11, 1989

Barry Hammond
166 West Yale Loop
Irvine, CA 92714

Re: File No. I-89-315 Follow-up

Dear Mr. Hammond:

This is in response to your request for additional assistance regarding the newly enacted provisions of the Political Reform Act (the "Act").^{1/} Your request relates to Advice Letter No. I-89-315, dated July 18, 1989.^{2/}

In that letter we advised that the Act does not prohibit you from financing and hosting a public access television program. However, we advised that once you become a candidate, payments for the program will be considered campaign expenditures unless made for personal purposes unrelated to your candidacy. In addition, if the program is used to promote your election, any funds expended on the program must first be deposited into a campaign bank account.

In our telephone conversation of July 18, 1989, you asked at what point you would qualify as a candidate for the purposes of the Act. You also asked that we confirm our oral advice in writing.

Section 82007 provides:

"Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time....

According to this definition, there are two ways in which a person might become a candidate under the Act. First, a person may become a candidate by being listed on a ballot or qualifying to have write-in votes on his or her behalf; or, second, a person may become a candidate if he or she receives contributions or makes expenditures with a view to bringing about his or her nomination or election to any elective office. (In re Kelly (1975), 1 FPFC Ops. 162, copy enclosed.) You have stated that you have not yet filed any of the required forms to become a candidate and that you have not solicited or received any contributions. However, you have asked if payments for your television program will be considered expenditures with a view to bringing about your nomination or election to office, thus making you a candidate.

Section 82025 defines "expenditure" as any payment, forgiveness of a loan, payment of a loan by a third party, or any enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates. (Regulation 18225(a)(1), copy enclosed.)^{3/} Consequently, payments for your television program will not be considered expenditures unless you use the show to influence or attempt to influence the voters to vote for you or against other candidates. Where your program merely discusses general political topics, payments for the program will not be considered expenditures and will not be reportable. (Tavlin Advice Letter, No. A-84-153, copy enclosed.)

The following letters have been enclosed to provide further guidance as to the circumstances under which you will be considered a candidate within the meaning of Section 82007:

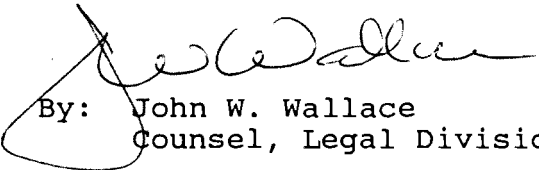
^{3/} The definition of "political purposes" is different where the person making the expenditure is already a candidate. (Regulation 18225(a)(2).)

Bradshaw Advice Letter, No. 78-142; Filice Advice Letter, No. 79-008; Powell Advice Letter, No. A-85-241; Crocker Advice Letter, No. I-86-321.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

FPPC
May 22 3 39 PM '89

May 19, 1989

FPPC, Legal Division
428 "J" Street #800
Sacramento, Ca. 95814

I am writing this letter at the suggestion of Linda Morrow, in your office. I spoke with her last week and had a few questions. She felt that a letter to your division outlining my questions, would be the most appropriate method of getting the best answers.

Currently I pay for and host a community news and television program in the City of Irvine which airs twice monthly on the local public access channel. I pay for the air time, but have the services of a private video facility, outside the city limits, donated to me. I have a co-host who donates his time as well.

I plan to declare as a candidate for public office, either Mayor of Irvine, or City Council member, at some point prior to our next municipal election, June 1990.

What I need from your division, is a letter answering various questions I have regarding my continued involvement in the T.V. show and what if any items involved in the show are considered campaign contributions.

The specific questions are listed below. If you have other comments or see additional items I might need to address please advise on those as well.

1. Can I continue to host the show, after I have declared candidacy?
2. If so can I structure the show so that it is not considered a part of my campaign? If so, what restrictions on content of the show will be imposed on us? Please be as specific as possible.
3. If the show can continue, but has to be declared under campaign disclosure laws, what items need to be declared?
 - A. Donation of studio use and time?
 - B. Donation of co-host time?
 - C. Expenses paid for the show, e.g. advertising and air time?
4. Can the local cable company force me to give equal time to my opponents?
5. If show can continue outside the rules of campaign disclosure, can we solicit paid advertisements to support the show?

If you have any questions about anything regarding my request please call and I will be glad to assist in whatever way I can. Thank you for your time and assistance.

Sincerely

BARRY J. HAMMOND
166 WYALC LOOP

92714
(714) 261-7031



California Fair Political Practices Commission

July 18, 1989

Barry Hammond
166 West Yale Loop
Irvine, CA 92714

Re: Your Request for Informal
Assistance
Our File No. I-89-315

Dear Mr. Hammond:

This is in response to your letter requesting informal assistance regarding the newly enacted provisions of the Political Reform Act (the "Act").^{1/} Since your advice request does not refer to a specific governmental decision, we are treating it as a request for informal assistance.^{2/}

One of your questions concerns whether you are required to provide equal time to your opponents on the public access television program you host. This matter is not governed by the Act and thus is outside of our jurisdiction. You may wish to contact the Federal Communications Commission for advice on this question.

QUESTIONS

1. Under what circumstances will your program be considered a campaign-related expense and the donation of studio time and the volunteer services of a co-host to the program in-kind contributions that must be disclosed pursuant to the campaign disclosure provisions of the Act?

2. May you solicit paid advertising for the program and how will the payments for advertising be treated under the Act?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).

CONCLUSIONS

1. The Act does not prohibit a candidate from financing and hosting a public access television program. However, payments for the program will be considered campaign expenditures unless made for personal purposes unrelated to your candidacy. In addition, if the program is used to promote your election, any funds expended on the program must first be deposited into a campaign bank account.

Moreover, any discounts or rebates provided to you by the television station are contributions to you, unless the discount or rebate is offered to all the candidates for the same office. Finally, any donation of services for the program will be considered in-kind contributions, with the exception of the donation of volunteer personal services, which is expressly excluded from the definition of "contribution" as set forth in the Act. Therefore, the value of your co-host's volunteer services will not be an in-kind contribution to your campaign.

2. The Act does not prohibit you from soliciting paid advertising for your program except where the advertising constitutes a contribution which may exceed the contribution limits of the Act. The advertising will be considered a contribution if the advertisers do not receive full and adequate consideration for their payments (based upon the standard rate for advertising in similar public access programs in the area) or if the advertisements expressly advocate your election. If the advertising is a contribution and is solicited and received within the limits of the Act, payments for it must be reported as campaign contributions.

FACTS

You are currently the host of a public access television program in the City of Irvine. The program airs twice per month and covers community news. The program is financed primarily with your personal funds. However, you do receive donations of free studio time from a private video studio and the time of a co-host for the program. You are considering declaring your candidacy for a city office for the June 1990 election.

ANALYSIS

The Public Access Television Program

Section 82015 defines contribution as:

...a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is

clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

* * *

Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

Section 82025 defines "expenditure" as any payment, forgiveness of a loan, payment of a loan by a third party, or any enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.

Where a payment is made or received by a candidate, it is presumed to have been made for political purposes. The candidate can only rebut this presumption by showing clearly from the surrounding circumstances that the payment was made or received for personal purposes unrelated to his or her candidacy. (Regulation 18215; Regulation 18225, copies enclosed.)

Thus, payments by you or any provision of services to you, such as for studio time from a private video studio, creates a presumption that the transaction was for political purposes. In such a case, payments made from your personal funds for your public television program must be reported as contributions to and expenditures by your campaign. The donation of studio time to you and any discounts or rebates provided to you by the television station must be disclosed as in-kind contributions to your campaign unless the discount or rebate is offered to all the candidates for the same office. (Section 82015; Smelko Advice Letter, No. A-86-265, copy enclosed)

The donation of volunteer personal services, however, is expressly excluded from the definition of "contribution" set forth in the Act.^{3/} Thus, the value of your co-host's volunteer services would not be a reportable in-kind contribution.

^{3/} However, this exception would not apply where the volunteer co-host was actually being paid by another for the rendition of the services. Instead this would be treated as an in-kind contribution from the person paying the volunteer's salary. (In re Nielson, 5 FPPC Ops. 18, copy enclosed.)

Further, while there are no limitations on the amount of personal funds that a candidate may expend on his own campaign, any personal funds used to promote the election of the candidate, like any contributions received by the candidate, must first be deposited in the candidate's campaign bank account. (Section 85301(b); Section 85201; Lippert Advice Letter, No. I-89-087, copy enclosed.) Thus, funds you use for the program must be deposited in your campaign bank account and expended directly from that account.

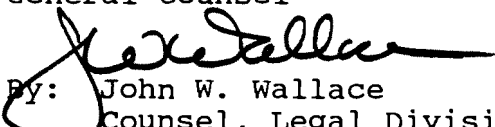
The Solicitation of Advertising

The Act does not prohibit you from soliciting paid advertising for your program except where the advertising constitutes a contribution which exceeds the contribution limits of the Act. (Section 85302; Section 85303; Section 85305.) Payments for advertising will be considered a contribution if the advertisers do not receive full and adequate consideration for their payments based upon the standard rate for advertising in similar public access programs in the area, or if the advertisements expressly advocate your election. If the advertising is a contribution and is solicited and received within the limits of the Act, it must be reported as contributions. (Regulation 18215; Warren Advice Letter, A-86-120, copy enclosed.)

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

FPPC
May 22 3 34 11 '89

May 19, 1989

FPPC, Legal Division
428 "J" Street #800
Sacramento, Ca. 95814

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BARRY J. HAMMOND
166 Wyak Loop

(714) 261-7031

May 22 8 20 AM '89

May 19, 1989

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 428 "J" Street #800
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Sincerely

BARRY J. HAMMOND
 166 WYAL LOOP
 IRVINE 92714

(714) 261-7031



California Fair Political Practices Commission

May 24, 1989

Barry J. Hammond
166 Wyale Loop
Irvine, CA 92714

Re: Letter No. 89-315

Dear Mr. Hammond:

Your letter requesting advice under the Political Reform Act was received on May 22, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh